JAMES THEOPHILUS FREDERICKS v. PELOPOR DINAMIK SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
WONG CHEE LIN J
[ORIGINATING SUMMONS NO: WA-24NCC-585-10-2019]
7 FEBRUARY 2020

COMPANY LAW: *Accounts – Inspection, application for – Whether requirements for inspection of company's accounts fulfilled – Whether applicant a director of company and demand for inspection refused – Whether AGM a condition precedent to request for inspection – Whether there was 'ulterior motive' that would result in detriment if inspection allowed – Whether applicant permitted to request for own auditor to undertake inspection – Companies Act 2016, s. 245*

In this application, the plaintiff, a director of the defendant, sought an order, pursuant to s. 245 of the Companies Act 2016 ('CA'), that (i) the accounting and other records ('accounting records) of the defendant be open for inspection and be available for the approved company auditor acting for the plaintiff to make copies and/or take extracts; and (ii) the defendant to supply to the plaintiff a copy of the accounting records listed in annexure B in encl. 2 within seven days from the date of being served with the order. The defendant objected to the plaintiff's action and had alleged that (i) the correct venue was to request for an annual general meeting ('AGM') to pose the necessary questions and to obtain the necessary documents; (ii) the documents requested in annexure B were too wide and ambiguous and thus indicated 'ulterior motive' on the plaintiff's part; (iii) the plaintiff's failure to provide any reasons for and purpose for obtaining the documents requested created suspicions and formed part of the plaintiff's 'ulterior motive'; (iv) the plaintiff had been approving the audited financial statements since he was a director without any issues and thus, the application was alleged to be unreasonable and baseless; (v) the plaintiff intended to exert pressure on the deponent of the defendant's affidavit by filing a previous suit ('191 suit') and by harassing and threatening the defendant's employees; and (vi) the appointment of the plaintiff's personal auditor proved the plaintiff's 'ulterior motive'.

Held (allowing plaintiff's application):

(1) All that the plaintiff needed to demonstrate in this case was that (i) he is a director of the company; (ii) he had demanded for the inspection of the company's accounts; and (iii) such right had been refused. Once the requirements had been established, it is presumed that such request for inspection is made in the best interest of the defendant or to discharge his director's duties and the burden would shift to the defendant to rebut

A the said presumption by showing clear proof of 'ulterior motive' or the director's request is one which is detrimental to the interest of the company. (paras 6 & 7)

(2) The plaintiff was a director of the defendant and it had been established that the plaintiff had demanded for inspection of the defendant's B accounting records. However, the defendant was not agreeable to let the plaintiff inspect the company's accounting records. The plaintiff had thus satisfied all the requirements in law for the application to inspect the company's accounts. The burden had now shifted to the defendant to show clear proof and to satisfy the court affirmatively that the grant C of the right of inspection would be for a purpose detrimental to the interests of the company or for any 'ulterior motive'. (paras 10-15)

(3) The plaintiff had made the necessary attempts to request and inquire for an AGM but the attempts were proved to be futile. Further, there is no statutory requirement to request for an AGM as a condition precedent D to file this application. In view of the fact that the plaintiff was entitled to inspection of all the corporate books and records of the defendant, the documents requested under annexure B could not be considered as too wide and ambiguous. It would thus not constitute an 'ulterior motive' on the plaintiff's part and neither had the defendant adduced any clear E evidence to prove such 'ulterior motive'. Further, merely because he had signed previous audited accounts of the defendant, the plaintiff could not be denied his right to inspect the defendant's accounts. This did not show any clear proof of 'ulterior motive' on the plaintiff's part or any detriment would be caused to the defendant. (paras 19, 20, 22 & F 29)

(4) The plaintiff was not obliged to give any reasons or to provide a 'need to know basis' for the application. The plaintiff had explained why he wished to inspect the company's accounts. He suspected that something was amiss with the defendant's financial records and his suspicions G compelled him, in the discharge of his fiduciary and statutory duties, to undertake the requisite inspection. Furthermore, a winding-up petition filed by one of the company's director against the company for an alleged debt of RM310,027.90 had made it imperative for the plaintiff to have access to the company's accounts to verify the truth of such H allegation. (para 26)

(5) 191 suit was a totally different cause of action and was brought on a different basis and the suit had been struck out, not based on merit, but due to technical non-compliance of the Rules of Court 2012 that was filed by the plaintiff's previous solicitors. It was not the duty of the court I to examine the allegations and disputations such as the alleged

harassment and threats caused to the company's employees. The defendant bore the burden of satisfying the court affirmatively that the grant of the right of inspection would be for a purpose detrimental to the interests of the company. Mere allegations of the threats and harassments and raising totally irrelevant past disputes were 'patently insufficient to deny the statutorily entrenched inspection rights of company directors.' (paras 30 & 32)

(6) Section 245(8) of the CA permitted the plaintiff to make an application for the plaintiff's own auditor to undertake the inspection on behalf of the plaintiff. In support of the application, the plaintiff's personal auditor, being an approved company auditor, had also provided the requisite undertaking to the court that the information acquired during the inspection would not be disclosed to anyone except the plaintiff. (paras 33 & 36)

Case(s) referred to:

Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd [2018] 2 CLJ 103 HC ***(refd)***

Dato' Tan Kim Hor & Ors v. Tan Chong Consolidated Sdn Bhd [2008] 1 LNS 741 CA ***(refd)***

Oxford Legal Group Ltd v. Sibbasridge Services Plc and Another [2008] All ER (D) 263 ***(refd)***

Soo Boon Siong v. Saw Fatt Seong & Ors [2008] 1 CLJ 365 CA ***(refd)***

Legislation referred to:

Companies Act 2016, s. 245(8)

For the plaintiff - Sivabalan Sankaran & Tan Sze Lee; M/s Tan Swee Im, Siva & Partners
For the defendant - Phang Zheng Jack; M/s Vicknaraj, R D Ratnam Rajesh Kumar & Assocs

Reported by S Barathi

JUDGMENT

Wong Chee Lin J:

[1] This is an application by the plaintiff as a director of the defendant pursuant *inter alia* to s. 245 of the Companies Act 2016 ("the Act") for an order that:

(i) the accounting and other records ("accounting records") of the defendant be open for inspection and be available for the approved company auditor acting for the plaintiff to make copies and/or take extracts; and

(ii) the defendant to supply to the plaintiff a copy of the accounting records listed in annexure B in encl. 2 within seven days from the date of being served with this order.

[2] The following provisions of the Act are relevant to this application:

(i) Every company shall keep accounting record:

> 245(1) A company, the directors and managers of a company shall:
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> (a) cause to be kept the accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and
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> (b) cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited.

(ii) The directors of the company are entitled to inspect the account:

> 245(4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open for inspection by the directors.

(iii) The court may order inspection of the accounting records by an approved auditor acting for a director:

> 245(8) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(d) Inspection of documents and records to be kept by company and made available for inspection by any person who is entitled and to make copies or take extracts of it:

> 48(1) Any document and record that is to be made available for inspection under this Act, shall be made available for inspection by any person who is entitled to inspect such document and record at the registered office of a company or any other place allowed by this Act.
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> (2) A company shall provide proper facilities to enable the documents and records to be inspected.
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> (3) The person who is entitled under this Act to inspect the documents and records referred to in subsection (1) shall be allowed to make copies or take extracts from the documents and records.

[3] In addition to the statutory provisions, the law on the director's right to inspect company's account is settled in the leading Court of Appeal decision in *Dato' Tan Kim Hor & Ors v. Tan Chong Consolidated Sdn Bhd* [2008] 1 LNS 741; [2009] 2 MLJ 527 where Low Hop Bing JCA in delivering the judgment referred to the common law and a leading Singapore Court of Appeal authority on the subject in the following manner:

> (1) the right of a director of a company to inspect its accounting and order records is a right existing at common law and is recognised in s. 199 of the Companies Act. Such right is a concomitant of the fiduciary duties of good faith, care, skill and diligence which the director owes to the company, and as such, like other rights and powers must be exercised for the benefit of the company. The obligation of the company to allow inspection by its director is mandatory;
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> (2) this right has been described as being 'absolute'. A director is *prima facie* entitled to inspection and is not required to demonstrate any particular ground or 'need to know' as a basis: *Molomby*. So long as the right is exercised for the proper performance of the director's duties to the company and not with a view to causing any detriment to the company, it is in that sense 'absolute' ...
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> (3) there is no residual discretion in the court to refuse inspection. Where the court bars a director from exercising his right of inspection, it is not in fact exercising a residual discretion, but is in such an event satisfied on the basis of the evidence before it that the director's intention is to use the information obtained for ulterior purposes such as with a view to causing detriment to the company and that the director is thus abusing the confidence reposed in him ...

[4] In the case of *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd* [2018] 2 CLJ 103; [2018] 8 MLJ 394, the court has also recognised such statutory rights of the directors where it was held that:

> [16] Thus the statute provides for the obligation of every company and director of the company to keep accounting records under s. 167(1), the right of the directors of the company to inspect the accounting records (s. 167(3)), and the court may order inspection of the accounting records by an auditor acting for a director (s. 167(6)).
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> [17] I should add that these provisions are repeated in the new Companies Act 2016. They are now contained in the new s. 245. As such, case law authorities, especially local decisions, some of which will be highlighted herein, would continue to be of direct relevance when interpreting situations which are subject to the new Companies Act 2016...
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> [18] In relation to these statutory provisions, it is settled law that directors have unrestricted and direct access to such company information. The right of a director to inspect documents of a company is mandatory in order to enable a director to discharge his responsibilities fairly and equitably for the benefit of the company and the shareholders.

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> [71] Such right is unfettered. It is unbridled and almost absolute, and it can only be denied in the presence of clear proof that the request to inspect (and make copies) is by reasons unrelated to the discharge of director's duties ...

B **[5]** The court in *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd* (*supra*) went on further to explain that:

> [88] By virtue of holding the office of a director of a company, once the director makes a request under s. 167 (s. 245 under the Companies Act 2016) or the common law, which the director does not need to provide
C justification for, as the law presumes it to be made in the best interest of the company, but which request is however declined by the company, a *prima facie* demonstration of the director's entitlement to the documents has been established. For in all cases of refusal, all that a director needs to demonstrate in order to enforce his inspection right is that he or she is a director of the company, that as a director, he or she has demanded
D inspection, and that the right has been refused.

[6] Hence, in the current application, all that the plaintiff (director) needs to demonstrate is that:

(i) he is a director of the company;

E (ii) he has demanded for the inspection of the company's accounts; and

(iii) such right has been refused.

[7] Once the plaintiff has established the above requirements, it is presumed that such request for inspection is made in the best interest of the
F defendant or to discharge his director's duties and the burden will shift to the defendant to rebut the said presumption by showing clear proof of 'ulterior motive' or the director's request is one which is detrimental to the interest of the company.

[8] In the Court of Appeal case of *Dato' Tan Kim Hor & Ors v. Tan Chong*
G *Consolidated Sdn Bhd* (*supra*) Low Hop Bing JCA has held as follows:

> It is for the defendant to show 'clear proof' and to satisfy the court 'affirmatively' that the grant of the right of inspection would be for a purpose detrimental to the interests of the company. There must be a 'real ground' that the right would be abused and that substantial harm would
H be caused to the company thereby ...

[9] Also, in the case of *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd*, the court has stated the following:

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> [28] Crucially, it is for the company resisting the inspection to demonstrate that the director is exercising his right of inspection for some ulterior or improper purpose or to injure the company. And in order to achieve this, the company must show clear proof that the director is exercising his right for inspection for such improper purposes ...
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> ...
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> [89] The burden then shifts to the company to rebut the presumption of the request being in the best interest of the company or made in the discharge of director's duties, by showing clear evidence of impropriety in the director's purpose or which is unrelated to the discharge of director's duties that could justify denial of inspection of the documents and with it requests for copies of such documents, as well as the right to appoint an agent or auditor on behalf of the director to perform the inspection.

[10] There is no dispute that the plaintiff is a director of the defendant.

[11] In support of his contention that he had demanded for inspection of the company's accounts, the plaintiff relied on the following facts based on the affidavit evidence before the court:

(i) The plaintiff has demanded/inquired for the inspection of the accounting records and has summarised his attempts, in short, as follows:

(a) On 14 October 2016, the plaintiff has written a letter to the defendant's officers to request for audited accounts of the defendant, questioned why no meetings that are statutorily required have been held and other matters related to the company but was not entertained by them.

(b) On 7 February 2017, 8 February 2017 and 9 May 2017, the plaintiff has emailed the defendant's former accountant for the audited accounts and briefing of the accounts but he was not reverted to.

(c) On 15 May 2017, the plaintiff has written a letter to the defendant's secretary to request for meetings to be held in the company, to inquire for resolutions pertaining to the audited accounts, to confirm whether any AGM has been held and other matters relating to the company's affairs but his request was not entertained.

(d) On 31 July 2017, the plaintiff has emailed both the defendant's officers for trial balances of the company but there was no response.

(e) On 23 April 2019, the plaintiff has demanded a copy of the defendant's reports and financial statements from the year of incorporation to the latest financial year (1994 to 2018) but was informed by the defendant's officers that the latest financial report lodged was in year 2015, thus was provided with the documents which were not up-to-date.

(f) On 26 August 2019, the plaintiff has further requested for a list of documents from the defendant's officers but was informed that they were unable to provide it.

(g) An inspection of the company's documents was carried out in the defendant's registered office on 29 August 2019 but the plaintiff was unable to get the requested documents. The plaintiff was further directed by the defendant's auditor to directly contact the other two directors who are in sole custody and control of those documents.

(h) On 20 September 2019, two separate letters were sent out to the other two directors for the requested documents but until to-date, the plaintiff still did not receive any requested documents.

[12] I am satisfied that the plaintiff had demanded for inspection of the defendant's accounting records.

[13] There is no dispute that at all material times, the defendant is not agreeable to let the plaintiff inspect the company's accounting records.

[14] I am therefore of the view that the plaintiff has satisfied all the requirements in law for the application to inspect the company's accounts.

[15] Thus, the burden is now shifted to the defendant to show clear proof and to satisfy the court affirmatively that the grant of the right of inspection would be for a purpose detrimental to the interests of the company or for any 'ulterior motive'. The plaintiff is further guided by the cases where there must be a real ground that the right would be abused, and that substantial harm would be caused to the company thereby. One of many possible examples is where inspection is in effect sought for the benefit of a competitor. (as per English Court of Appeal in *Oxford Legal Group Ltd v. Sibbasridge Services Plc and Another* [2008] All ER (D) 263 (Apr); [2008] EWCA Civ 387).

[16] The defendant has raised several objections in encl. 3 and has alleged the following reasons as the grounds to refuse the plaintiff's absolute right to inspect the company's account:

(i) plaintiff's failure to request for AGM;

(ii) documents requested by the plaintiff are too wide and ambiguous;

(iii) plaintiff's failure to provide any reasons for and purpose for obtaining the documents requested;

(iv) plaintiff's failure to raise any complaints on the accounts and had approved the documents since he was/is a director;

(v) alleged plaintiff's intention to exert pressure on the deponent by filing previous "191 suit" and by making harassment and threats to the company's employees;

(vi) disputation as to the appointment of the auditor; and

(vii) alleged abuse of court process/fishing expedition.

[17] The defendant has objected to the plaintiff's action in filing encl. 1 and had alleged that the correct venue is to request for an AGM to pose the necessary questions and to obtain the necessary documents.

[18] In the case of *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd*, the court held that there is no requirement in law that the holding of an AGM is a condition precedent to file this application. This is what the court said:

> [61] But it is trite that a director's right to inspect is unbridled, and certainly not conditional upon any prior approval by the company's board approval. There is no necessity for an action for inspection by one director must be joined in or supported by any other director. Every company director is individually entitled under the law to exercise the right of inspecting the documents of the company. There is absolutely no necessity for a board meeting as a condition precedent to filing encl. 1. In any event, the plaintiff's questions were in fact directed to the entire board of directors of the defendant, for the emails attaching the preliminary questions and the follow-up questions were addressed to the CEO and copied to all the other directors of the defendant company.

[19] In any event, the plaintiff has made necessary attempts to request and inquire for AGM but these attempts are proved to be futile as summarised above.

[20] Hence, I am of the view that the defendant's allegation is baseless as there is no statutory requirement to request for an AGM as a condition precedent to file this application and the plaintiff has in fact requested for such meeting to be held.

[21] The defendant has further objected to the documents requested by the plaintiff in annexure B by alleging that it is too wide and ambiguous and thus indicates 'ulterior motive' on the plaintiff's part. In this respect, in *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd* the court has held that:

> [34] ... it is a correct statement of law that in this country the right of a company director to inspect the corporate books and records and access all company information is virtually absolute. This is not difficult to appreciate. As directors are tasked with the responsibility of managing the business and affairs of the company, it is nothing less than axiomatic that the individual director cannot truly make his full contribution to the management of the corporate business unless he or she is given access to the corporation's books and records.

[22] I am of the view that the plaintiff is entitled to inspection of all the corporate books and records of the defendant. Hence, the documents requested under annexure B cannot be considered as too wide and ambiguous. In any event, it is difficult to appreciate how such a request by the plaintiff can constitute any "ulterior motive" on the plaintiff's part, neither has the defendant adduced any clear evidence to prove such "ulterior motive".

[23] Besides that, the defendant has alleged that the plaintiff's failure to provide any reasons for and purpose for obtaining the documents requested creates suspicion and forms part of the plaintiff's 'ulterior motive'.

[24] The plaintiff submits that Low Hop Bing JCA in the Court of Appeal case of *Dato' Tan Kim Hor & Ors v. Tan Chong Consolidated Sdn Bhd* had clearly explained that:

> [16] ... (2) this right has been described as being 'absolute'. A director is *prima facie* entitled to inspection and is not required to demonstrate any particular ground or 'need to know' as a basis: *Molomby* ...

[25] It was also held in *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd*:

> ... (1) A director was *prima facie* entitled to inspection and did not have to show any particular ground as a basis.

[26] I am of the view that the plaintiff is not obliged to give any reasons or to provide a 'need to know basis' for the application. In any event, the plaintiff has explained why he wished to inspect the company's accounts. He suspects that something is amiss with the defendant's financial records and his suspicions compelled him, in the discharge of his fiduciary and statutory duties, to undertake the requisite inspection. Furthermore, the Winding Up Petition No. WA-28NCC-1342-12-2019 ("winding-up petition") that was filed by the one of the company's director, Zainuddin bin Baharuddin against the company for an alleged debt of RM310,027.90 has made it imperative for the plaintiff to have access to the company's accounts to verify the truth of such allegation.

[27] The defendant has also alleged that the plaintiff has been approving the audited financial statements since he was/is a director without any issues and thus his application in encl. 1 is alleged to be unreasonable and baseless.

[28] In the Court of Appeal decision of *Soo Boon Siong v. Saw Fatt Seong & Ors* [2008] 1 CLJ 365; [2008] 1 MLJ 27, it was held that "the fact that the director had signed documents concerning the audited accounts including the directors' reports is not conclusive of the validity or truthfulness of the accounts. Thus, a director who has approved the company's audited accounts is still entitled to challenge the correctness of such audited accounts".

[29] I am of the view that the plaintiff cannot be denied his right to inspect the defendant's accounts merely because he had signed previous audited accounts of the defendant. Moreover, this does not show any clear proof of 'ulterior motive' on the plaintiff's part or any detriment that will be caused to the defendant.

[30] As regards the allegation of the plaintiff's intention to exert pressure on the deponent of the defendant's affidavit by filing a previous suit ("191 suit") and by harassing and threatening the defendant's employees, it should be noted that:

(i) the previous 191 suit is a totally different cause of action and/or brought on a different basis from the current application. This application is brought against the company purely to inspect the company's accounts after being repeatedly denied access to the accounts, while the 191 suit was brought against two individuals relating to the plaintiff's claims on the properties in Australia and jointly owned private properties and his shares in the company which were of a totally different subject matter filed by his previous solicitors;

(ii) not only that, the 191 suit was struck out not based on merit but due to technical non-compliance of the Rules of Court 2012 that was filed by the plaintiff's previous solicitors and thus it was struck out with liberty to file afresh; and

(iii) it is also not the duty of the court to examine all these allegations and disputations such as the alleged harassment and threats caused to the company's employees.

[31] In the case of *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd*, the court held the following:

> [45] It should be stated that the various affidavits of the parties in dispute in the instant case contain various and many allegations and counter allegations. In this context, it would not be the duty of the court to examine such averments and disputations. This is in line with the decision of the Singapore High Court in *Welch & Anor v. Britannia Industries Pte Ltd* [1993] 1 SLR 673; [1993] 1 SLR (R) 64, which held as follows:
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> > … It is not for the court at the hearing of an application (to inspect accounts and records) to go into the disputes between the contending parties and I will not deal with the charges and counter charges … beyond saying that they show clearly that the plaintiffs were concerned over the company's account before they made the application.
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> [52] It is worthy of emphasis that mere allegation which is not substantiated with evidential support is patently insufficient to deny the statutorily entrenched inspection rights of company directors. The law requires no less than clear proof …

A [70] … As such, in the instant case, complaints about the company having to make voluminous copies of documents, to bear the expenses incurred, or to deal with a difficult or even hostile director would merely be an ancillary, and distant secondary consideration which cannot in the slightest justify the displacement of the inspection rights of company directors under the law.

B ...

[93] The fact that a director may be hostile towards the company or its staff does not limit the inspection right and the right to take copies. The mere possibility of abuse or misuse of the right does not afford any ground for its denial or restriction. A director retains this right of
C inspection (inclusive of the right to be supplied with copies of documents so inspected), despite mere allegations that he is hostile, adverse or a competitor of the corporation, for as long as he remains a director of the company.

[32] The burden is on the defendant to show clear proof in satisfying the
D court affirmatively that the grant of the right of inspection would be for a purpose detrimental to the interests of the company. There must be a real ground that the right would be abused and that substantial harm would be caused to the company thereby. Mere allegations of the plaintiff making threats and harassment (which are denied) and raising totally irrelevant past
E disputes are "patently insufficient to deny the statutorily entrenched inspection rights of company directors".

[33] The defendant has further disputed the appointment of the plaintiff's personal auditor in the current application and alleged that this proves the plaintiff's 'ulterior motive'. In this respect, s. 245(8) of the Companies Act
F 2016 provides:

245(8) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the Court that information acquired by the auditor during his
G inspection shall not be disclosed by him except to that director.

[34] In relation to the statutory provision, the Court of Appeal in *Dato' Tan Kim Hor & Ors v. Tan Chong Consolidated Sdn Bhd* has further affirmed the position in law as follows:

H [28] In our view, s. 167(6) (now s. 245(8) is intended to facilitate and liberalise, and is not meant to impede, the right of inspection. Indeed, almost unbridled powers are conferred upon the court to give effect to the directors' right of inspection. Clearly, it is within the powers of the court to allow the plaintiffs to furnish a fresh undertaking by the auditor in terms as required by the court, by addressing it to the court and by
I deleting therefrom the words relating to the appointed servants/agents ...

[35] In the recent case of *Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd*, it was held that:

> (4) It was well within the plaintiff's right to make an application for the plaintiff's own auditor to undertake an inspection on behalf of the plaintiff as permitted under s. 167(6) of the Act ...
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> [75] The key prayer in encl 1 is for the plaintiff's own auditor to undertake an inspection on behalf of the plaintiff as permitted under s. 167(6) of the CA. It is well within the plaintiff's right to make such application, more so as he is not an auditor and thus requires the assistance of an approved company auditor to conduct the inspection of the defendant's accounting records. A director is not required by law to be a qualified accountant, and even a director who is an accountant is entitled to rely on the assistance of another accountant (see the High Court decision of Balia Yusof JC (as he then was) in *Loh Yoon Sang v. Ivory Pearl Sdn Bhd* [2003] MLJU 302; [2003] 7 CLJ 405). Thus the defendant's suggestion that the plaintiff had admitted that he was incompetent to perform his role as a director is wholly misconceived.
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> [79] And it is entirely up to the director to make his choice of his own auditor, who in the instant case is Mr Chan Kuan Chee, a partner at Crowe Horwath. This is a personal appointment of an agent by a director, and not by the company ...

[36] Hence, statute permits the plaintiff to make an application for the plaintiff's own auditor, in the current case, Mr Ong Tze Xiong (NRIC No.: 860219-56-6085) (License No.: 03372/06/2020 J), to undertake the inspection on behalf of the plaintiff and in support of such application, the plaintiff's personal auditor, being an approved company auditor has also provided the requisite undertaking to court that the information acquired during the inspection will not be disclosed to anyone except the plaintiff as annexed in annexure A of encl. 1.

[37] In the premises, I am of the view that the defendant has failed to show that the plaintiff was actuated by an ulterior motive or that the grant of the right of inspection would be for a purpose detrimental to the interest of the defendant. Accordingly, I would allow the plaintiff's application.